IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5064 OF 1991.

M/s. Hotel Rosalia Pvt. Ltd.,]
Registered Office at 14, Cannaught]
Road, Pune, by its Managing Director,]
R.N. Bhate, r/o 14, Cannaught Road,]
Pune.] .. Petitioner

Versus

G.B. Hirani, age about 54 years,]
Occupation Business, residing at]
14, Cannaught Road, Pune - 411 001.] .. Respondent

Mr. R.S. Datar for the appellant.

Mrs. Suhasini Mutalik for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 18TH JULY, 2005

ORAL JUDGMENT. :

1. The Petitioner-landlord/plaintiff has invoked Article 227 of the Constitution of India and, thereby, challenged the order dated 3rd August, 1990, passed by the VIIIth Additional District Judge, Pune, in Appeal No. 334 of 1986, thereby, allowed the Appeal of the respondent-tenant, whereby, the judgment and order dated 9th April, 1985, passed by the Small Cause Court, Pune, granting the decree in favour of the petitioner-landlord was set aside. The cross-objections filed by the

petitioner-landlord was also dismissed. Therefore, present Writ Petition.

2. The petitioner-plaintiff has filed a Suit for possession on the ground of arrears of rent, damages, nuisance and additions and alterations in the suit premises by the respondent-tenant, being the owner of the premises in question bearing C.T.S. No.12/1, Cannaught Road, Pune. The respondent is in possession of two rooms on a monthly rent of Rs.45/-, including educational cess and water charges, totalling Rs.68.70/- p.m. The respondent defaulted in payment from 1st April, 1976. The respondent-tenant was creating nuisance in the common gallery. The respondent-tenant had erected a partition of a permanent nature. Based on all these grounds, petitioner-plaintiff issued a Notice dated 26th October, 1999, and demanded the possession of the premises which remained unreplied. However, by Written Statement, the grounds of eviction were objected by the respondent-tenant. The respondent-tenant denied the liability of the water charges @ Rs.21/- p.m. to the petitioner. There is no dispute about monthly rent i.e. Rs.45/-, but specific objections were raised about the inclusion of water charges in the alleged rent of Rs.45/- p.m. The dispute was also raised that the monthly rent of Rs.45/- was excessive and unreasonable.

The respondent-tenant admittedly have not deposited the rent after receipt of the said demand notice. The tenant further defended the case on the ground that the petitioner-landlord declined to accept the rent. The advance of Rs.2000/- paid by the respondent-tenant to the petitioner-landlord was not accepted. He denied the allegations of nuisance or alteration as alleged. The learned Judge, after considering the material placed on the record held that the respondent is a defaulter and, therefore, the petitioner is entitled for the possession of the suit premises and further directed to pay Rs.1,842.60 p. to the petitioner. The grounds of nuisance, addition and alteration of the permanent structure in the suit premises were rejected. Petitioner-landlord has not challenged the said finding by a separate appeal. However, cross-objections were raised by the petitioner-landlord. The respondent-tenant, however, preferred an appeal No.234 of 1986 against the grant of decree for possession. The Appellate Court, after considering the said material on the record, reversed the said finding and allowed the appeal of the respondent-tenant and the order passed by the Small Causes Court was set aside by holding that the Notice dated 26th October, 1979, was not legal and that the petitioner-landlord failed to prove that the respondent-tenant had acquired a suitable accommodation

and/or was not using the said premises for more than two and half years. Therefore, the present Petition by the petitioner-landlord.

3. Heard Mr. R.S. Datar, the learned counsel appearing for petitioner, who has relied on various judgments and basically contended that the demand Notice in question cannot be said to be illegal merely because there was exorbitant rent claimed or demanded. He contended that there was no exorbitant rent claimed. The respondent-tenant has admittedly not deposited the rent within one month and has not disputed the same. Even though application under Section 11(3) of the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947 (for short "The Bombay Rent Act"), was filed, but the same was not pursuaded diligently. The challenge to the rent or adjustment of water charges or such issues cannot be agitated for the first time in the Written Statement. In view of this, the Appellate Court’s order is bad and contrary to the settled provision of law. The judgment and order of the Trial Court dated 9th April, 1985, therefore, is correct and need to be maintained. He further contended to consider the cross Appeal/cross objections as raised on the other grounds of nuisance and permanent alteration. The learned counsel appearing for the respondent-tenant, however,

resisted the above contentions and supported the reasoning of the impugned judgment and order dated 3rd August, 1990. She has also relied on a number of judgments in support of her contentions and prayed for dismissal of the present Petition.

4. The learned Appellate Court has reversed the finding on the foundation that the exaggerated demand by the petitioner-landlord by Notice dated 26/10/1979 (Exh.102) was bad in law. The demand of water charges @ Rs.21/- p.m., in absence of any agreement, was highly exaggerated as the said amount was not due and in view of this, the impugned notice under Section 12(2) of the Bombay Rent Act was bad. There is no much dispute that apart from monthly rent of Rs.45/-, additional amount of Rs.21/- p.m. towards water charges were claimed. There is no material on the record to suggest that the petitioner-landlord was entitled to claim water charges separately from the respondent-tenant. The case of the respondent-tenant was that the rent of Rs.45/- p.m. includes the water charges also. The rent receipts were accordingly placed on the record. There is also evidence to suggest, as observed by the Appellate Court, that the petitioner-landlord never recovered the water charges @ Rs.21/- p.m. from the respondent-tenant. Therefore, the demand of arrears of rent from 1st April,

1977, was exorbitant.

5. The learned counsel appearing for the petitioner has relied on 1972, Mh.L.J., 459 **Lalshankar Vs. Kantilal** - that demand of arrears of rent, even though not due, cannot be said to be invalid on the ground that excessive rent was demanded; 1977, Mh.L.J., 281 **Sd. Umar Sd. Ahmed Vs. Dadamiya Husenbhai & Ors.** - that mere filing of Misc. Application under Section 11 of the Bombay Rent Act itself is not sufficient. The tenant must continue to pay standard rent during the proceedings to claim the protection, apart from raising the dispute, if any; 1978, Mh.L.J.,(SC), 550 **Ganpat Ladha Vs. Shashikant Vishnu Shinde** - that tenant, if does not complied with the provisions of Section 12(3)(a) and (b), he cannot claim protection and a decree for eviction must follow. The Court has no discretion in the matter. The reasoning given by the Appellate Court, therefore, are clearly perverse and patently unreasonable and need to be interfered with under Article 227 of the Constitution. After receipt of the notice of termination under Section 12(2) on the ground of arrears of rent, if the tenant fails to raise dispute about the standard rent within one month of the notice, he is not entitled to raise dispute in an

Eviction Suit as Section 12(3)(a) would apply; AIR 1983, Bom., 212 **Chhaganlal Mulchand Jain Vs. Narayan Jagannath Bangh** - Mere mistake as regards quantum of rent will not make the notice invalid. The Notice under Section 12(2) should be construed liberally. AIR 1983, Bom., 217 **Dnyaneshwar (deceased by LRs.) & Ors. Vs. Pandharinath Damodar Khadke** - that on failure to pay rent or to raise dispute about the standard rent within one month of the notice, Eviction Suit should be decreed under Section 12(3)(a) notwithstanding that the rent claimed in the notice was in excess of the agreed rent. 1998 (3) M.L.J., 237, **Lalji Lachhmandas Vs. Amimruddin Amanulla & Anr.** - that if dispute about standard rent is not raised by the tenant in an application under Section 11, such dispute raised in the Written Statement is not permissible. The Court cannot fix the rent in absence of application under Section 11. The Notice of demand by the landlord of excess rent shall make the notice bad in law. The tenant had an option to pay the undisputed amount and raise dispute as regards receipt of the claim. 1995 (1), M.LJ., 689 **Peter Joseph Bhonsale Vs. Poona Diocesan Corporation Pvt. Ltd.** - that dispute regarding standard rent can only be raised by resorting to Section 11 of the Bombay Rent Act. The tenant cannot claim protection under Section 12(3)(b) since he had taken no steps whatsoever to claim such a

protection. 2002 (2), B.C.R., 767 **Ujwalabai @ Meena Shantaram Apte Vs. Namdeo Dnyanoba Shingare** - as tenant was in default of more than 6 months and did not raise dispute regarding standard rent within one month, the case is covered by Section 12(3)(a) of the Bombay Rent Act and not under Section 12(3)(b).

6. The learned counsel appearing for the respondent has also relied on the unreported judgment dated 13th December, 1995, by the Division Bench of this Court (K.G. Shah & N.D. Vyas, JJ.) in Writ Petition No.3658 of 1981 and Others **Purshottam Bhanudas Palse Vs. Shakuntalabai** and other connected matters and relied on the following passage:

> "Everything will depend on this aspect of the matter which would be a factual aspect of the matter. The court shall have to make an attempt to find out whether the inaccuracy in the demand of arrears of rent and permitted increases in the notice under Section 12(2) of the Rent Act is traceable to any malafide or dishonesty on the part of the landlord. If a positive finding of malafide or dishonesty is recorded, then, in our opinion, the notice could be faulted as bad on that ground alone. Otherwise on the mere inaccuracy, the notice could not be faulted. Even if the inaccuracy is of large measure, that also would be no ground to fault the notice unless of course the magnitude of inaccuracy coupled with other facts and

> circumstances appearing on record is capable of leading to a finding of malafide or dishonesty on the part of the landlord."

She further relied on 1989, B.C.R., 406 **Shantilal Mistrilal Chhajed Vs. Sadashiv Murlidhar Ratnaparkhi** - that exaggerated demand by the landlord makes the Notice bad. She has further relied on (2004) 6, S.C.C., 455 (SC) **Ramji Purshottam (Dead) by LRs. & Ors. Vs. Laxmanbhai D. Kurlawala (Dead) by LRs & Anr.** and further contended that in view of the explanation 3 as inserted by amendment Act 51/75 to Section 12 of the Bombay Rent Act, the water charges paid by the tenant, if any, must be returned or reimbursed by the landlord and such tenant cannot be deemed to be in arrears of rent outstanding against him unless the said amount is adjusted. She, therefore, contended that as admittedly the water charges were paid and unless that excess amount is adjusted, it cannot be said that the respondent-tenant were in arrears of rent. The issue about payment of water charges without any agreement and/or permission from the landlord was not agitated in the Written Statement or earlier point of time, cannot be allowed to be raised now in the present Writ Petition. The Trial Court’s reasons in this regard is correct. Therefore, there is no question of any

adjustments as claimed by the tenant. In the evidence and as per the record, there is nothing to prove that the tenant had deposited or paid any water charges. DW1 in his evidence only admitted to have paid Rs.1445/- towards electricity charges and not water charges. In view of this fact, the Apex Court's decision in **Ramji** (supra) is distinguishable being distinct on the facts itself.

7. The Bombay High Court in (2005) 2, BCR, 527 **Sadashiv Gangaram Lambe since deceased by his legal heirs Vs. Subhash Akaram Gotkhinde** after considering the scope and the principle behind Section 11 and 12 of the Bombay Rent Act, based on some of the decisions referred by the petitioner-landlord (supra) held that the mere demand of exorbitant rent itself cannot be the ground to make the notice bad in law. In the facts and circumstances of the case, the respondent-tenant ought to have raised a dispute and, pending the same, should have deposited the rent regularly as claimed. There was no bonafide intention exhibited or shown as Notice (Exh.102) itself was not replied and no dispute of any kind was raised at the relevant time. The Misc. Application, even though filed for fixing the standard rent, was never pursuaded diligently. There was nothing on the record to suggest that the same was pursuaded

and/or interim standard rent was sought to be fixed. Admittedly, no rent was paid even after demand, as raised. Therefore, as observed rightly in the cases cited supra, the raising of such dispute for the first time in the Written Statement in no way gives protection to the respondent-tenant. In view of the judgment of the Division Bench of our High Court, as cited by the respondent-tenant **Purshottam** (supra) and in view of the quoted paragraph above, it is very clear that mere inaccuracy, even if of large measure, would not be a ground to a notice unless it is coupled with the other facts and circumstances to demonstrate that the said demand was malafide or dishonest on the part of the landlord. There is no such case made out in the present case. There is no such material placed on the record. On the contrary, in view of the admitted position of not disputing the rent and not depositing the rent, even under objection, within the stipulated period, that itself disentitles the respondent-tenant to claim the protection based on the same. The case of **Shantilal** (supra) is distinguishable on facts itself and in no way supports the respondent-tenant’s case. In view of this, I am of the view that the Appellate Court was wrong in holding that the notice (Exh.102) was illegal based on the decision of our High Court in **Shantilal** (supra). On the contrary, the reasoning given by the Trial Judge

that the respondent-tenant were never ready and willing to deposit the rent and they failed to deposit the rent inspite of the demand and neglected to pay the rent regularly and, therefore, they are defaulters, is correct.

8. The Apex Court in (1995) 1, S.C.C., 26, **Ibrahim Abdulrahim Shaikh (Dead) by LRs. Vs. Krishnamorari Sripatlal Agarwal (Dead) by LRs.,** while dealing with the provisions of the Bombay Rent Act and specially Section 12 observed as under:

> "The tenant is obligated to pay the rent to the landlord every month unless the landlord refuses to receive it. In the latter event recourse can be had to deposit the rent."
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> "Therefore, by necessary construction of Sections 11 and 12, what this Court appears to have intended was that the tenant should dispute the standard rent or permitted increases within one month from the date of the receipt of the notice and then file the application under Section 11(3). It would not appear to have been meant that the application under Section 11(3) should also be filed within one month from the date of the receipt of the notice. But expeditious action is called for to prove the bona fides of the tenant disputing the right of the landlord in the claim of standard rent or permitted increases."

In view of this, I am of the view that the reasoning

given by the Trial Court is correct and need to be maintained on this issue.

9. Both the Courts, for want of material on the record, including the supporting evidence, held that the petitioner-landlord failed to prove the additions, alterations in the suit premises and also that the suit premises were not used for more than two and half years. There is material on the record, as observed by the Appellate Court that the respondent-tenant is in occupation prior to the provision of the property by the present petitioner-landlord. There is nothing and even otherwise there is no material to justify the same. In view of this, the submission as made by the counsel for the petitioner, based on the decisions as referred above, is accepted and the submission made by the counsel for the respondent-tenant is rejected.

10. In view of the above reasoning, the impugned judgment and order dated 31st August, 1990, in Appeal No.334 of 1986 is quashed and set aside and the judgment and order dated 9th April, 1985, is restored on all counts.

11. Petition is allowed. Rule, therefore, is made absolute in terms of prayer clauses (a) and (b) with no

order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]